2025 INSC 1191

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1471 OF 2013

Nilesh Baburao Gitte …Appellant(s)

VERSUS

State of Maharashtra …Respondent(s)

J U D G M E N T

K.V. Viswanathan, J.

1. Nilesh Baburao Gitte (the appellant) stands convicted for matricide-killing of one's own mother. By the present appeal, the appellant calls in question the correctness of the judgment of the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Appeal No.447 of 2012 dated 23.07.2013. By the said judgment, the High Court, while dismissing the appeal of the appellant, confirmed the conviction and sentence imposed on him by the Additional Sessions Judge-2, Ambajogai in Sessions Case No. 42 of 2011. The Sessions Judge had convicted the appellant along with one Balasaheb

Gangadhar Gitte (appellant before the High Court in Criminal Appeal No.502 of 2012 and since acquitted by the High Court) for offence punishable under Section 302 of Indian Penal Code, 1860 (for short the "IPC") and sentenced them for life imprisonment.

THE PROSECUTION CASE: -

2. The prosecution case unfolded this way. PW-8 – Swati Bhore, Deputy Superintendent of Police, was on duty on 22.07.2010 when she received a phone call from an unknown person informing that there was doubtful death of the deceased-Sunanda (also known as Nanda Gitte) of Talani village. She intimated PW-7 – Vidyadhar Murlidhar Kale, Assistant Police Inspector (API), of Parali Police Station. Thereafter, PW-7 – Kale asked PW-4 – Dadarao Kondiram Bankar, Police Sub-Inspector, to go to the spot and inform as to what the situation was. On receiving information from PW-4 that suspicious things were going on, PW-7 reached there with his staff. According to PW-7, the last rites of the dead body of the deceased were being hurriedly carried out. According to him, when he wanted to inspect the dead body, the mob obstructed him. However, he

convinced them and inspected the body and found that there was strangulation mark on the neck and injury on the backside of skull with blood oozing. The crowd, when informed that it was a case of murder, ran away. PW-8 -Swati Bhore also reached the spot and noticed the strangulation mark on the neck and injury on the head. The dead body was removed from the pyre and inquest was carried out. Postmortem was also performed that afternoon.

3. Since the area fell within the jurisdiction of Bardapur Police Station, PW-7 informed PW-9 -Sunil Srinavas Birla, Police Inspector. PW-7 also handed over the inquest *panchnama*, the letter given to medical officer for postmortem as well as the postmortem report to PW-9 who had also by then reached the spot. PW-9 came back to Bardapur Police Station and registered the FIR on 23.07.2010 at 00.45 hours. Investigation was carried out and chargesheet was laid against two accused – the appellant-Nilesh Baburao Gitte and the acquitted accused-Balasaheb Gangadhar Gitte.

4. At the trial, the prosecution examined 11 witnesses and marked a large number of Exhibits. The accused were examined under Section 313 of the Code of Criminal Procedure, 1973.

5. The case rests entirely on circumstantial evidence. The Trial Court and the High Court, while convicting the accused, have relied on the following circumstances:-

5.1 That the evidence of PW-6 –Dr. Salunke Radhakishan Sarjerao who also conducted the postmortem, established that the deceased-Sunanda met with homicidal death.

5.2 That the appellant has proximate presence with the deceased and in spite of that he did not intimate the police.

5.3 That the appellant arranged cremation of his mother in the open field behind his house. The story of the defence that the appellant lived in a separate residence has not been proved.

5.4 That the conduct of the appellant in attempting to dispose of the dead body without following the due procedure established by law, which is relevant under Section 8 of the Indian Evidence Act, 1872 (for short the "Evidence Act").

5.5 That there was discovery admissible under Section 27 of the Evidence Act, and there was corroboration of the FSL report matching with the blood of accused-Nilesh on the clothes worn by him and the petticoat of deceased-Sunanda.

5.6 That the motive for the appellant appears to be to acquire the property of the deceased.

6. Though the Trial Court convicted accused-Balasaheb also, the High Court found that except the recovery of the nylon rope at the instance of appellant-Balasaheb, the prosecution has failed to bring home the guilt of Balasaheb.

7. We have heard Mr. K. Parmeshwar, learned senior counsel for the appellant and Mr. Adarsh Dubey, learned counsel for the State of Maharashtra.

CONTENTIONS OF THE APPELLANT: -

8. Mr. K. Parmeshwar, learned senior counsel, ably assisted by Sh. Dilip Annasaheb Taur, learned counsel contended that there is serious uncertainty as to whether at all the death of the deceased was homicidal. Learned senior counsel referred to the evidence of PW-6 - Dr. Salunke and the postmortem report Ext.-36 to contend that ligature mark was admittedly absent from the backside of the neck. Learned senior counsel referred to the evidence of PW-6 to the effect that the absence of the ligature mark on the backside of the neck is

possible in cases of hanging and that in case of strangulation ligature mark would be present all around the neck.

9. Learned senior counsel contended that during investigation PW-9 had obtained a certificate dated 26.09.1989 issued by the Vivekanand Hospital, Latur which indicated that the deceased was suffering from schizophrenia. According to the learned senior counsel, though PW-9 admitted that such a certificate was obtained, the same was not exhibited at the Trial.

10. Learned senior counsel contended that PW-6 had deposed that some injuries on the body of the deceased were possible if a person suffering from schizophrenia attempts suicide by hanging. Further it was contended that PW-6 had deposed that if death was by strangulation with a nylon rope, imprint injury of the rope is not possible as force is applied by some other person. PW-6 had deposed that imprint injury is possible in the case of hanging as there was weight and force of the body. PW-6 had also deposed that in case of strangulation force is mostly on the thyroid region and not on the other region of the neck.

11. Learned senior counsel drew attention to the deposition of PW-6 to demonstrate how the iron pipe allegedly recovered from the appellant being not a sharp-edged weapon, could not have caused the injury on the scalp of the deceased. In view of this, learned senior counsel submitted that there is uncertainty on as to whether the death was suicide or homicide and it will be very unsafe on this evidence to conclude that the death of the deceased was by homicide.

12. Learned senior counsel submitted that no blood group analysis of the deceased was carried out and in any event, no DNA test was done rendering the FSL analysis inconclusive. In any event, it is submitted that neither the FSL report nor the evidence collected from the appellant, namely, the blood sample and the chemical analyzer report Ext.85 and Ext.35 respectively were put to the appellant during his examination under Section 313.

13. Learned senior counsel contended that the recovery attributed to the appellant does not inspire confidence at all in as much as PW-2, the witness examined to support the recovery, admits that he went to the police station at the instance of PW-3 -Sudhakar Nagargoje, the uncle of the appellant, who was inimically disposed off towards the

appellant. Learned senior counsel also draws attention to the fact that there is material contradiction in the evidence of PW-2 and PW-9 as to the manner in which PW-2 reached the place of occurrence. While PW-2 stated that he was travelling by motorcycle, PW-9 states that himself, PW-2, the other *panch* witness (not examined), and the appellant went in a jeep. Further, it is submitted that PW-2 has deposed that he signed the recovery *panchnama* after the police reduced it into writing but states that he does not know how to read Marathi and that PW-2 further deposed that the appellant did not give the memorandum to the police in his presence.

14. Learned senior counsel launched a frontal attack on the evidence of PW-3 -Sudhakar Nagargoje on whom strong reliance was placed by the prosecution. According to the learned senior counsel, PW-3 has a serious property dispute with the family of the deceased. PW-3 had admitted disputes with regard to Hindu Undivided Family properties which are to be divided between PW-3, the deceased and their brother-Prabhakar. PW-3 has admitted that 30 acres of land in Takalgaon was their family land with one guntha valued at Rs.5 lakhs. PW-3 further admitted that during partition, the deceased got 15

gunthas of land and that there was no mutation entry of the partition and more land has been shown in the name of the deceased-Sunanda on 7/12 extract. According to PW-3, except 15 gunthas of land, the other land shown in 7/12 extract in the name of the deceased-Sunanda was his land. He admitted that he filed Civil Suit No.205/2003 and his brother Prabhakar filed Civil Suit No.195/2005. He states that he does not know whether his sister-Sunanda was a party in those suits. PW-3 admitted that he settled the matter in the Lok Adalat.

15. According to the learned senior counsel, it was PW-3 who had a dispute with the deceased over the property and not the appellant. Learned senior counsel further contends that PW-3 speaks about having received a phone call from the appellant requesting him to sell out the property which fell to the share of Sunanda, five days before the incident. He also claims that he gave a xerox copy of the incoming phone call as proof to the police, however, the proof of the incoming call was not exhibited nor has the appellant been confronted under Section 313 about the said circumstance. Learned senior counsel also submits that PW-3 is instrumental in planting PW-2 as a recovery witness. Further, PW-3 has stated that at the Parali Police

Station PW-7 and 8 showed him the 7/12 extract with blood stains recovered from the appellant, when PW-3 visited police station a day after the incident. However, PW-8 stated that she does not recollect meeting PW-3 either on the day of incident or a day later. PW-8 further deposed that she does not remember anything about the 7/12 extract. On this aspect, PW-7 takes a contradictory stand. While he deposed that he does not know person by name Sudhakar Nagargoje, and that he did not remember to have met with person by name Sudhakar Nagargoje till the day of deposition, he however, states that he showed blood stained 7/12 extract to Sudhakar Nagargoje. In view of the above, learned senior counsel submits that it is very unsafe to place any reliance on the evidence of PW-3 to convict the appellant.

16. It is further submitted that the evidence of PW-4, 7, 8 and 9 do not indicate as to whether they carried out any investigation to find out as to how the attempted cremation in the morning of 22.07.2010 was organised and if so by whom. Admittedly, nobody has spotted the appellant at that site in the morning. There was nothing emerging from the evidence as to who organised the cremation. They all speak to the fact that there were several people at the site but nobody was

examined. Further the submission of PW-3 is recorded as late as on 10.09.2010, even though PW-3 states that he visited the police station on 23.07.2010.

17. Further, it is contended that admittedly PW-9 – the Investigating Officer, states that the appellant was residing in the house of one Motiram Gitte. In spite of the same, burden has been cast upon him to explain as to how death occurred on the presumption that the appellant and the deceased lived together. In view of all this, it is submitted that the appellant is entitled to his acquittal since the prosecution has not established a cogent link in the chain of circumstances suggesting a sole hypothesis.

CONTENTIONS OF THE STATE: -

18. Mr. Adarsh Dubey, who very ably presented the case on behalf of the State, vehemently countered the submissions of the learned senior counsel for the appellant. Learned counsel for the State relied on the evidence of PW-3 to contend that the appellant and the deceased lived in the same premises. He further referred to the evidence of PW-9 to contend that the place where the incident

happened is owned by the appellant. Learned counsel for the State developing on the same submitted that the fact that the appellant called PW-3 is admitted by the appellant in his Section 313-Statement. Learned counsel submits that it was for the appellant to explain how the deceased suffered injuries and relied on the judgment of this Court in ***Trimukh Maroti Kirkan vs. State of Maharashtra***[1].

19. Learned counsel for the State vehemently argued that the conduct of the appellant subsequent to the incident was very unnatural. Learned counsel harped on the fact that the appellant did not bother to lodge any formal report to the police and contended that his act of silence showed his complicity in the present offence. According to the learned counsel, common course of human conduct would be that a son would raise a hue and cry if he sees his mother in an injured condition. It was only because the appellant was wanting to hastily cremate the mother, he did not raise any hue and cry and relied on Section 8 of the Evidence Act, to bring home the aspect of subsequent conduct pointing to the guilt of the accused.

[1] (2006) 10 SCC 681

20. Learned counsel for the State relied on the evidence of PW-6 – Dr. Salunke to contend that the injuries on the deceased were antemortem in nature and that the age of the injury was 24 hours within the postmortem. Learned counsel for the State further submitted that PW-6 had clearly deposed that the injuries were not self-inflicted and that the cause of the death, as opined by the doctor, was asphyxia due to strangulation. PW-6 has further deposed that the injuries were possible by nylon rope and iron pipe. Learned counsel for the State contended that the absence of the ligature mark on the backside of the neck was on account of the force being mostly on the thyroid region and contended that there was hemorrhage to the thyroid cartilage. Learned counsel for the State contended that there was nothing to show that the deceased was suffering from schizophrenia and questioned the reliance placed on the certificate dated 26.09.1989 issued by the Vivekanand Hospital.

21. Learned counsel for the State relied on FSL/CA report which, according to the learned counsel, clearly demonstrated the link between the appellant and the present offence. Learned counsel for the State relied on the fact that the nylon rope pieces were stained

with blood and the blood group "A" detected on the nylon rope was also the blood group of the appellant.

22. Learned counsel for the State contended that the appellant had a motive and relied on the evidence of PW-3 to bring home the point that the appellant anticipated direct gain of property from the death of the deceased. Learned counsel contended that PW-3 was not going to directly benefit from the death of the deceased since apart from the appellant the deceased had a husband and two daughters.

23. Learned counsel for the State contended that investigating officer can also prove the recovery and the mere fact that the *panch* witness turned hostile would not be fatal to the prosecution. In any event, learned counsel for the State contended that PW-2 was permitted to be cross-examined by the prosecution and in the said cross-examination he has given positive evidence in respect of the recovery. So contending, the learned counsel for the State prayed that there was no case for interference with the concurrent findings by the courts below.

ANALYSIS: -

24. We have carefully considered the submissions of the learned counsel for the parties and perused the records.

LAW ON CIRCUMSTANTIAL EVIDENCE: -

25. This case rests entirely on circumstantial evidence. This Court has, time and again, reiterated the five golden principles to be kept in mind while appreciating a case based on circumstantial evidence. In ***Sharad Birdhichand Sarda*** vs. ***State of Maharashtra***, (1984) 4 SCC 116, this Court held as under:-

> "153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> "(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra* [(1973) 2 SCC 793] where the observations were made:
>
> "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

MYSTERY SURROUNDING THE ALLEGED ATTEMPTED CREMATION: -

26. There is a mystery surrounding the genesis and origin of the prosecution case. We say so for the reason that on a complete reading of the evidence of Swati Rambhau Bhore (PW-8), Vidhayadhar Murlidhar Kale (PW-7), Dadarao Kondiram Bankar (PW-4) and Sunil Shrinivas Birla (PW-9), who all admittedly landed up on the morning of 22.07.2010 at the site of the alleged attempted first cremation, a lingering doubt still remains in our mind as to why further leads from that time, place and alleged event were not picked up and why no further investigation as to who organized the cremation was carried out.

27. PW-8 claims to have received a phone call from an unknown person about the doubtful death of the deceased and about the fact that the deceased has been put on pyre and claims to have intimated PW-7 who deputed PW-4 first and also himself reached thereafter. Even PW-9, who was in charge of the jurisdictional police station, also reached there. All four admit to have seen a pile of wood for funeral being organized and the body of the deceased kept on it. Admittedly, there were lots of people who had gathered.

28. The police team noticed injuries on the body of the deceased and had the body taken down from the pyre. When it was announced that the deceased had been murdered, evidence is that the crowd ran away from the spot. Thereafter, as per the prosecution case, an inquest was got done followed by a post mortem by PW-6 and papers handed over to Sunil Shrinivas (PW-9) who registered a FIR at 0045 hours on 23.07.2010. No leads from the crowd, who gathered there, have been picked out and nobody has been examined in Court. There is no evidence to show that the present appellant was present at the site of the first attempted cremation, or any of the relatives of the deceased.

29. It is the case of the prosecution that cremation was performed by the appellant on the evening of 22.07.2010 between 6-7 PM. The evidence of PW-8 that she received a call from an unknown person even if true as to why no effort has been made to track down the said person to elicit more details or at least to investigate from the members of the crowd and put before the court as to what their version of the story was, indicates that there is something more than what meets the eye in this case.

EVIDENCE OF THE DOCTOR (PW-6) AND THE P. M. REPORT : -

30. Be that as it may. Dr. Salunke Radhakishan Sarjerao (PW-6) performed the postmortem on the dead body of the deceased between 3.10 PM and 4.35 PM on 22.07.2010. The doctor found blood stains on the forehead of the deceased. On the probable cause of death, the doctor opined that it was asphyxia due to strangulation. The doctor made the following observations in the postmortem report (Ex.36):-

> "i) No evidence of injury to external genitals.
> No evidence of purging.
> ii) upper extremities flexed at elbow, figure flexed.

iii) lower extremities extended.

(1) Ligature mark encircles the neck 22 cm. in length and 1/2 cm. in breadth. Absent as back side of neck, at the level of Thyroid cartilage and horizontal. Dry, hard, brown as a depressed groove. On dissection subcutaneous issue is echymossed, hemorrhage to thyroid cartilage.

2) Abrasions on chin 5 cm. in length and 1/2 cm. in breadth. Extending to body of mandible Rt. side 6 cm. in length and 1/2 cm. in breadth.

3) Abrasion on left side of neck. 8 to 9 cm. in length and ½ cm. in breadth. Encircle the left side of Neck. Abrasion mark absent on front of neck below the level of thyroid cartilage.

4) Abrasion on Rt. Side of neck. 4 to 5 cm. in length and 1/2 cm. in breadth below the level of thyroid cartilage and encircle the Rt. side of neck absent in front of neck.

5) Imprint abrasion on the Rt. Wrist joint 78 cm. in length and 1/2 cm. in breadth, absent back side of wrist found.

6) Imprint abrasion on left wrist joint 78 cm. in length and 1/2 cm. in breadth absent back side of the wrist.

7) Imprint abrasion around the Rt. Calf muscle, below the knee joint on outer side of 23-24 cm. in length and 1/2 cm. in breadth.

8) Imprint abrasion on the Lt. calf muscle below the knee joint on outside of 23-24 cm. in length and 1/2 cm. in breadth and absent on inner side.

9) Abrasion on Rt. Side of upper and outer gluteal region extending 12 cm. and 3 cm. in breadth above ones Rt. side of back.

10) Abrasion marks on both thighs and back side reddish brown in colour.

Age of above injury are within 24 hrs.

Injury no. 1 and 10 – only colour is mentioned

Ext. 37 (Provisional cause of death- 22.07.2010)

This is to certify that I Dr. Salunke R. S. M.O PHC Ghatnandur performed P.M. examination on deceased Nandubai Baburao Gitte age 50 yrs.

Provisional Cause of Death is due to Asphyxia due to strangulation."

31. The doctor opined that the cause of death was asphyxia by strangulation. It will be noticed that there was no ligature mark from the back side of the neck. During cross-examination, the doctor clearly deposed that the absence of ligature mark on the back side of neck is possible in case of hanging. He further deposed that in case of strangulation; the ligature mark should be present all around the neck.

32. The doctor further opined that injury nos. 2,3 and 4 may be possible for a schizophrenia patient during attack and that injury nos. 5 and 6 may be possible if a person bangs his head on the wall and due to broken bangles. Dealing with the injury on the scalp, the doctor opined that it is possible with a sharp-edged weapon. He further deposed that that the imprint injury of the nylon rope is possible in case of hanging as there were weight and force of body. The doctor further stated that in case of strangulation, imprint injury

of rope is not possible as force is applied by some other person and that in case of strangulation force is mostly on thyroid region and not on other region of the neck.

33. One more fact which we need to notice is that PW-9 had deposed that he collected the certificate dated 26.09.1989 from the Vivekanand Hospital, Latur. However, this certificate was not marked during trial and remained as part of the records produced by the prosecution. The said document reveals that the deceased was treated for relapsed schizophrenia. PW-9, however, stated that it was not revealed in his investigation that the deceased was suffering from schizophrenia.

34. We are constrained to hold that, based on the deposition of Dr. PW-6 examined by the prosecution, a serious doubt arises as to whether at all the deceased died a homicidal death. The candid admission of PW-6 that in the absence of ligature mark on the back side of the neck hanging cannot be ruled out and the further reinforcement that in strangulation ligature mark should be present all around the neck lead us to conclude that this is not a case where we can safely opine that the death was by homicide. There is no definite

medical opinion and in view of the considerable ambiguity in the evidence of PW-6, death by suicide, cannot be said to be completely ruled out. We are also reinforced in our view by Modi's Medical Jurisprudence and Toxicology (Twenty Third Edition) which states that normally in case of strangulation, ligature marks are horizontal or traverse continuous.

"*round the neck low down in the neck below the thyroid…*"

35. Added to this is the fact that PW-9, after procuring the certificate from Vivekanand Hospital, Latur has not only not exhibited it but has simply stated that the investigation did not reveal that the deceased suffered from schizophrenia. What is that investigation, is not forthcoming. A document produced by the prosecution as part of the chargesheet pursuant to the investigation though not exhibited can be relied upon by the defence. In ***Ramaiah alias Rama v. State of Karnataka***[2] this Court held thus:-

> "14. ….Strangely, the High Court has discarded the mahazar drawn by PW 8 by giving a specious reason viz. it was not an exhibited document before the court, little realizing that this was the document produced by the prosecution itself and even without

[2] (2014) 9 SCC 365

formal proof thereto by the prosecution, it was always open for the defence to seek reliance on such an evidence to falsify the prosecution version….."

36. Let us, however, proceed on the assumption that death was by homicide and examine whether the evidence is sufficient to implicate the appellant.

ACQUITTAL OF A2-BALASAHEB ON THE SAME EVIDENCE

37. It must be remembered that on the same evidence, the High Court has acquitted Balasaheb Gangadhar Gitte (A2). Satta Patwekar (PW-2) was examined by the prosecution to speak of the recoveries. In the chief-examination, he deposed that "*nothing happened in the police station*". He was cross-examined by the prosecutor with the permission of the court. In cross, insofar as accused No.2-Balasaheb was concerned, he deposed that it was accused No.2-Balasaheb, who gave a memorandum to the effect that he will take out the nylon rope and it was Balasaheb who took to the place and took the nylon rope out. We will deal with this witness and his proximity to PW-3 a little later in this judgment. However, the High Court was not satisfied with the evidence against Balasaheb and held that the alleged

recovery of nylon rope on the statement of Balasaheb was not incriminating in nature and the prosecution evidence was lacking to establish the active involvement of Balasaheb, apart from the fact that there was no motive for Balasaheb. We are recording this only to show that Balasaheb has since been acquitted and the alleged recovery alone held insufficient to sustain a conviction. The State has accepted the acquittal. This is an important aspect which one needs to bear in mind while discussing the case of the appellant.

POSITIVE EVIDENCE OF PW-9 (I.O.) THAT APPELLANT LIVED SEPARATELY

38. The other important aspect is that none of the witnesses PWs – 8, 7, 4 and 9 spoke about the presence of the appellant at the time of the first alleged attempt to cremate the deceased. The entire case of the prosecution including the submission of learned counsel for the State here proceeds on the assumption that the appellant lived with the deceased and, as such, on the principle of ***Trimukh Maroti Kirkan*** *(supra),* the appellant owed an explanation as to how the deceased suffered serious injuries. We are unable to accept this line of argument. PW-9 Sunil Shrinivas, the Investigating

Officer is categoric in his evidence, that the appellant Nilesh was residing in the house of Motiram Gitte on rental basis. When specifically asked as to what documentary evidence he possess to show that Nilesh was the tenant of Motiram Gitte, he answered stating that the appellant Nilesh was residing in the house of Motiram Gitte but it was not revealed that he was his tenant. The statement of Motiram Gitte was not recorded. Today in the teeth of the evidence of the Investigating Officer that the accused was a resident in the house of Motiram Gitte, it cannot be concluded that the accused resided with the deceased and was with the deceased at the time when she breathed her last. In view of this, to apply the principle of ***Trimukh Maroti Kirkan*** *(supra)* by attributing any special knowledge of facts on this score to the appellant cannot arise.

39. In ***Trimukh Maroti Kirkan*** *(supra)* this Court was dealing with corresponding burden on the inmates of the house to give cogent explanation. The following is what this Court has stated: -

> "15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden

would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

40. Undeterred, learned counsel for the State sought to rely on the evidence of PW-3 Sudhakar and PW-10 Narshingh, the Circle Officer, to establish the factum of common residence between the appellant and the deceased. We have carefully scanned the evidence of PW-10. However, there is nothing in the deposition to show that PW-10 has deposed that the appellant resided with the deceased. PW-10 was the Circle Officer for Ghatnandur Circle. He has drawn the spot map (Ex.65). He says that he has not taken the map from the office and did not have the assured survey number and gut no. of spot of offence. He also admitted that he had not mentioned the survey number or gut number in Ex.65 spot map. In cross-examination, he was shown certain extracts which are in the name of Nilesh, the appellant. They are marked as Ex. 70-74.

41. We are really at a loss to understand how this can establish the fact that the accused resided with the deceased especially in the teeth of the categoric evidence of I.O. PW-9.

42. The other evidence relied upon is the evidence of PW-3 – Sudhakar Nagargoje. No doubt, he has deposed that in the house at Talani Village, the appellant and his mother were residing and sometimes, the appellant's sister also used to come there. However, the appellant's counsel has launched a serious attack on the evidence of PW-3 and has highlighted several circumstances which indicated that PW-3 was inimically disposed of towards the appellant. We have in the later part of this judgment discussed the evidence of PW-3 separately. As far as the aspect of residence is concerned, we are inclined to believe the deposition of PW-9 I.O which has clearly brought out that the appellant was not residing with the appellant.

43. From the above evidence, it could not said that the appellant owed an explanation for the cause of death of the deceased as nothing has been demonstrated by the prosecution to show that there was any fact about the alleged incident which was *especially* within the knowledge of the appellant. It is trite to recall the following

memorable words of Vivian Bose, J. in ***Shambu Nath Mehra v. The State of Ajmer***[3]:-

> "……in a criminal case the burden of proof is on the prosecution and section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are *pre-eminently* or *exceptionally* within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not."

EVIDENCE OF PW-2 – THE PANCH WITNESS

44. PW-2, as adverted to earlier, was cross examined by the Public Prosecutor. He, in the Chief examination, deposed that nothing happened in the police station. However, during the cross by the public prosecutor, he deposed that the appellant gave a memorandum of 23.07.2010 and his signature was appended to it. Under the admissible portion of the memorandum, the appellant agreed to show the iron pipe and nylon rope. He stated that the *panch* witness, the appellant and the police went in a private jeep and at the site took out the iron pipe and his clothes from the wooden diwan. He deposed

[3] 1956 SCR 199

that the police seized the objects under the seizure memo and took his signature.

45. It should be remembered that this was the same witness who deposed about the accused Balasaheb Gitte taking out the nylon rope and the clothes from the fields of Manikrao Gitte. However, the said accused has been acquitted. The deposition of PW-2 is to the effect that the appellant took out the material objects from his house which read with the evidence of PW-9 is clear that according the prosecution it was the house of Manikrao Gitte where the appellant was living.

46. In the cross-examination by the appellant's lawyer, he admitted that he had visiting terms with PW-3 Sudhakar and that Sudhakar had faith in him and also that he was doing political work of Sudhakar. He also admitted that it was Sudhakar who asked him to go Bardapur Police Station. He admitted in cross by the appellant's lawyer that the accused did not give memorandum to police in his presence. Though initially, he stated that he went with the appellant and the police in a jeep, in cross by the defence, he stated that he is not aware as to who showed the place to the police as he was following the police jeep on a motor cycle. He admitted that he could not read Marathi but signed

the document once the police reduced it to writing. He further admitted that there was no talk with the police when they reduced into writing the document and took his signature. To put it mildly, the witness has materially contradicted himself and we have no doubt that he is taking enormous liberties with truth.

47. One other fact which requires mention is the fact that PW-2 speaks of the recovery of iron pipe on the statement of the appellant. However, as adverted to above, Dr Salunke- PW-6 has categorically stated that the iron pipe shown to him was not a sharp-edged weapon and that the ½ cm injury seen on the scalp is possible by sharp-edged weapon. We are only flagging this to show that we have more than one reason to discount the testimony of PW-2.

48. Once we are not inclined to believe the recovery at all as an aspect implicating the appellant, we do not have to labour upon the argument on the inconclusive nature of the FSL analysis and the failure to conduct the DNA test. It is important to note, however, that the FSL analysis report was not put to the accused when questioned under 313. Further, the State has not denied the assertion of the counsel for the appellant that the blood group analysis of the deceased

was not carried out. Finally, what resolves this issue completely against the State is the fact that A2, was acquitted on the finding that except the recovery there was nothing against the said accused and that the recovery was not incriminating in nature. That acquittal has been accepted by the State.

49. The evidence of PW-2 is also contradictory to the evidence of PW-9 insofar as the travel to the place of recovery is concerned. While PW-9 stated that the *panch* witness, the appellant and the police travelled by a jeep, PW-2 has taken a contradictory position. While he first stated that they went by jeep from Bandanur Police Station to the place, he later stated that he does not know who identified the place as he was following the police in his motor vehicle. All this present a very unsatisfactory state of affairs and we are not able to consider the recovery as a link at all in the chain of circumstances.

EVIDENCE OF PW-3 – THE APPELLANT'S UNCLE: -

50. The appellant has a strong case that it was PW-3 who has masterminded the prosecution against him. To start with, PW-3 set

up a case that the appellant murdered his mother for the purpose of property. To give legitimacy to this theory, he deposed that the accused called him five days before the death and requested to sell out the property which fell to the share of his mother. He further deposed that he gave a xerox copy of proof of that incoming call to the police. That document or Call Details Record (CDR) establishing this fact is not exhibited. The State has a case that the appellant in Section 313 examination admitted to have called PW-3. This contention is erroneous because there are two calls from the appellant which PW-3 speaks about. In the 313-examination, the appellant has specifically denied under question No.11 about him calling PW-3 and requesting to sell out property which fell to the share of his mother. The appellant replied stating that the said statement was "false". The second call which PW-3 speaks about and which the appellant admits in Section 313 in answer to question No.8 is the call informing PW-3 of the death of his mother by the appellant.

51. The angle of property adverted to by PW-3 is not convincing for the reason that the appellant too has a similar allegation against PW-3. It was suggested to PW-3, in cross-examination by the counsel for the

appellant that Civil Suit No. 205 of 2003 filed by him (PW-3) at Civil Court Ahmednagar and Civil Suit No. 195 of 2005 filed by Prabhakar are pending in the Civil Court of Ambajogai. On a suggestion as to whether the deceased was a party, PW-3 feigned ignorance. PW-3 also admitted to have settled the dispute in the Lok Adalat. A suggestion was put to the effect that the sister was not present when the dispute was settled, which however, he denied. PW-3 admitted to the suggestion that he has made an application after the decree for mutation of his name for the rent. He further denied the suggestion that the Tehsildar asked him to bring the son of the deceased for mutating the records. It is also admitted by him that he did not mention in the police statement about the call made by the appellant 4-5 days before the death of the deceased.

52. What is intriguing is that the statement of PW-3 was recorded only on 10.09.2010, a good 50 days after the death of the deceased. PW-3 admits that he visited Parli Police Station on the next day of the death of the deceased when he came for immersion of ashes. He even deposed to the effect that blood stained extract of the 7/12 land at Ahmadpur, recovered from the appellant was shown to him by PW-7

and PW-8, though PW-8 and PW-7 gave a contradictory version, which we have adverted to hereinabove, while discussing the contentions of the learned counsel. As to why his statement was not recorded by the police for a period of 50 days was for the prosecution to explain, which they have not. If this is coupled with the fact that PW-2, the *panch* witness's categoric deposition that it was due to PW-3 Sudhakar's message that PW-2 went to Badanapur Police Station, the mystery about the delayed recording of PW-3's statement gets only confounded. PW-2 also deposed that PW-3 knew Ramakant Barule, the other *panch* witness (not examined). PW-2 deposed that both he and Ramakant Barule were on visiting terms with Sudhakar. PW-2, Sudhakar and Ramakant Barule allegedly went to the Police Station on 23.07.2010 if so, it is inexplicable why the statement of PW-3 Sudhakar was not recorded till 10.09.2010. No explanation is forthcoming for the delayed recording of the statement of PW-3.

53. In this background, we are not able to believe PW-3 on the motive attributed to the appellant. Having come out with a case of motive, prosecution has miserably failed to establish the same. It has come on record that the appellant has his father as well as two sisters

who are alive. It is not as if that the property would, on the death of the deceased, immediately devolve on the appellant in the event of the alleged murder by him going undetected. There was no statement recorded from even the immediate family of the deceased.

54. Much was made about the fact that the appellant never raised hue and cry about the death of his mother and it was the police through the efforts of PWs 4,7,8 and 9 who unearthed the offence. Section 8 of the Evidence Act (Section 6 of Bharatiya Sakshya Adhiniyam, 2023) was invoked to make out a case of unnatural subsequent conduct against the appellant.

55. We have already recorded a finding that the story of PWs 4,7,8 and 9 about the genesis and origin has not been convincing. That failure to investigate the alleged crowd which had assembled and disbursed at the first alleged attempted cremation of the deceased baffles one's comprehension. It has already been demonstrated from the evidence of PW-9 that the appellant was not living with the deceased. It has also come on evidence (PW-1 Dinkar Manikrao) that the cremation which took place at around 6-7 PM on the evening of 22.07.2010, the appellant participated and even poured water in the

mouth of his mother. The appellant has even admitted that he called his uncle to inform of the death of his mother which appears to be a natural conduct. The medical evidence adduced through PW-6 Dr. Salunke and the post mortem report Ex.36 has also not conclusively established homicide. The recoveries alleged, to say the least, do not lend assurance to our minds about their genuineness. The motive alleged has not been established. The acquittal of the second accused-Balasaheb and the rejection of the evidence of PW-2 insofar as recovery of the nylon rope only reinforces our view.

56. The courts below have fallen into a serious error in convicting the appellant on the basis of the evidence on record. Not only the tests laid down in ***Sharad Birdhichand Sarda*** *(supra)* have not been satisfied, recording the conviction based on the material on record would be disregarding the warning of Baron Alderson, J. in Hodge, In re (1838) 2 Lewin 227 as reiterated in ***Hanumant*** vs. ***State of Madhya Pradesh***, (1952) 2 SCC 71 about the caution to be exercised in cases based on circumstantial evidence: -

> "The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more

> ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

57. For the reasons stated above, we allow the appeal, set aside the judgment of the High Court in Criminal Appeal No. 447 of 2012 dated 23.07.2013 and acquit the appellant of all the charges framed against him.

58. The appellant is on bail. The bail bonds shall stand discharged.

…….....J.
[**K. V. VISWANATHAN**]

…..…….....J.
[**K. VINOD CHANDRAN**]

New Delhi;
07th October, 2025